

## **REMARKS**

### **Status of the Claims**

Claims 48-83 are pending in the present application. Claims 66, 78-83 are allowed. Claims 1-47 were previously canceled. Claims 48-51, 53-58, 60-65, 67, and 70-71 are presently canceled. Claim 52 is amended to delete a phrase that is repeated in the claim and to correct antecedent basis. Claim 59 is amended to define a particular aspect of the invention. Claim 59 is further amended to remove a dependency to a canceled claim. Support for the amendment to claim 59 is found throughout the specification as originally filed including, *e.g.*, in original claims 8 and 11. The claims are canceled without prejudice or disclaimer. Applicants reserve the right to claim the canceled subject matter in one or more continuation or divisional applications. Reconsideration is respectfully requested.

### **Issues under 35 U.S.C. § 112, Second Paragraph**

Claims 52-57 are rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite. Specifically, the Examiner states that the phrase “the algal cells or algal cells,” is in error. Claims 53, 54, 55, 56, and 57 are canceled. Accordingly, the rejection is moot in regard to these claims.

Independent claim 52 is amended to specify “algae or algal cells,” in lieu of the repeated phrase. Accordingly, Applicants believe the rejection is overcome and request withdrawal of the rejection under 35 U.S.C. § 112, second paragraph.

### **Issues under 35 U.S.C. § 112, First Paragraph, Enablement**

Claims 48-51, 53-65, 67, and 70-71 are rejected under 112, first paragraph, as allegedly lacking enablement. Claims 48-51, 53-58, 60-65, 67, and 70-71, are canceled. Accordingly, the rejection is moot in regard to these claims. Applicants traverse the rejection as to remaining claim 59.

The Examiner rejects claim 59 as allegedly lacking enablement for the reasons of record. Essentially, the Examiner’s position is that methods for gene targeting through homologous recombination were allegedly not known in the art for plant species other than *Chlamydomonas*

at the time of filing. Accordingly, the Examiner believes that undue experimentation would be required by one skilled in the art to use the claimed method to confer resistance to PPO-inhibiting herbicides in any plant or plant cell. (See Office Action of January 16, 2003, page 12).

Applicants do not agree with the Examiner and submit that the present application enables the pending claims. Nevertheless, in order to expedite prosecution, claim 59 is amended. Amended claim 59 is directed to a method of selecting the green algae *Chlamydomonas* or cells thereof, upon which resistance to protoporphyrinogen oxidase-inhibiting herbicides is conferred, which comprises treating a population of the algae or algal cells, upon which resistance to protoporphyrinogen oxidase-inhibiting herbicides is conferred by the method according to claim 52, with a protoporphyrinogen oxidase-inhibiting herbicide, in an amount which normally blocks growth of said algae or algal cells expressing only herbicide-sensitive protoporphyrinogen oxidase.

Based upon the foregoing, Applicants submit that the specification enables claim 59 and the rejection under 35 U.S.C. § 112, first paragraph, should be reconsidered and withdrawn.

**CONCLUSION**

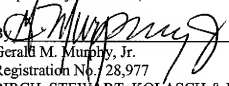
In view of the above-described amendments and remarks, Applicants believe the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Linda T. Parker, Reg. No. 46,046, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: NOV 25 2008

Respectfully submitted,

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